

Gendering employment law in the wake of the Covid-19 Pandemic

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Introduction

It has been three years since Aotearoa | New Zealand experienced its first nationwide lockdown in response to the global outbreak of the Covid-19 virus. Challenges stemming from the pandemic have been far reaching and pervasive as well as particularly severe in the employment context. Less than a year into the pandemic, Maria Hayes and I published a gender sensitive analysis of some of these challenges, outlining the disproportionate gender impact of various measures adopted to meet the disease.¹ Our article showed that, at least in the early days of the pandemic, a raft of gendered inequalities appeared in relation to occupational health and safety risks; the value of care; unemployment; old age; and violence and abuse. Our analysis, moreover, concurred with that of Matthew Scobie and Anna Sturman,² in that it revealed an intersectional negative disproportionate effect on Māori and Pasifika women. Overall, while the Aotearoa | New Zealand Government's response to the pandemic was largely effective in containing the outbreak until the vaccine rollout could be implemented, we found that its policy response distinctly lacked gender analysis which, in turn, contributed to widening the gender equality gap.³ We argued that the Covid-19 pandemic represented a crucial juncture and an opportunity for rethinking accepted labour standards and concepts under a gender lens. Based on our analytical reflections, we invited reflections on the relation between the economy and employment law and, in particular, we supported the reassessment of the value of work with a view to include production on an equal basis with reproduction.

Taking into consideration the experience, data and research developed over the past three years, as well as the change in context, including access to vaccination and the re-opening of the borders, the present article aims to revisit the conclusions of the 2020 publication and review the lingering impact of the pandemic on women's employment rights and practices in Aotearoa | New Zealand.

In order to do so, this article is divided into three main sections. The first section revisits the gendered impacts of the pandemic and examines the Government's long-term responses to the pandemic. Evidence accumulated over the period of the pandemic exposes the challenges faced by women in relation to ongoing stress and burnout in the workplace, precarious employment, and the cost-of-living crisis. The second section acknowledges an increase in the Government's gendered sensitivity in response to the pandemic. In this context, it outlines the development of the promising measure: *Te Mahere Whai Mahi Wāhine: Women's Employment Action Plan*. Finally, the last section looks forward to ways in which employment law and policy could be implemented to support gender equality in the workplace in a post-pandemic environment in

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¹ Annick Masselot and Maria Hayes, 'Exposing Gender Inequalities: Impacts of Covid-19 on Aotearoa | New Zealand Employment' (2020) 45 New Zealand Journal of Employment Relations 57.

² Matthew Scobie and Anna Sturman, 'Economies of Mana and Mahi Beyond the Crisis' (2020) 45 New Zealand Journal of Employment Relations <<https://ojs.aut.ac.nz/nzjer/article/view/22>> accessed 9 February 2023.

³ Masselot and Hayes (n 1).

the areas of flexible working arrangements, progressing fair pay agreements and gender tools in decision making.

I. What have we learnt about gender inequality and vulnerability from the COVID-19 Pandemic?

Occupational Health and Safety

In the early days of the pandemic, occupational segregation meant that women formed the majority of frontline workers with the resulting effect that they were more likely to be exposed to the virus.⁴ The initial statistics in Aotearoa | New Zealand indicated that more women than men had contracted Covid-19, despite evidence suggesting that men were biologically more inclined to be susceptible to the virus.⁵ As Aotearoa | New Zealand closed its borders and temporarily eliminated the virus on its territory, infection rates remained low for the rest of 2020 and most of 2021.

In March 2021, the Government announced its plan for the rollout of its Covid-19 vaccination programme under three principles: free access, fair distribution and equitable access.⁶ Priority was to be given to people most at risk of harm if infected and those who had high contamination risks because of where they lived and/or where they worked. Accordingly, the population was classified into groups reflecting age, occupation, health status, ethnic and geographic residence. Priority was given to border workers (group one) and healthcare workers (group two), who could access the first vaccination between February 2021 and May 2021. By contrast, a number of sectors that were vulnerable to being infected with Covid-19 were not immediately prioritised for vaccination, including frontline supermarket employees, pharmacy employees, public transport employees and people providing social care services (including domestic violence shelters like Women's Refuge). Following arguments with the Government, these workers were eventually included in group two ahead of the rest of the population from August 2021.⁷ This lack of prioritisation in the initial vaccination programme is concerning as women employees tend to congregate in several of the concerned sectors and it reveals an absence of established gender analysis in decision-making. As emerging evidence from overseas shows that women are more likely than men to suffer from effects of "long-Covid",⁸ the prioritisation for vaccination of some occupational sectors is important to consider with a gender lens because the health impact of contracting the virus can be unequal in the long-term.

Further, occupational health and safety issues across the pandemic is not limited to physically catching the virus. Indeed, women are more likely to work in jobs where psychological risks represent a prevalent health and safety issue. They are disproportionately exposed to "bullying, harassment, occupational violence, workload stress and care fatigue" which are environmental

⁴ *ibid* 58.

⁵ *ibid*.

⁶ New Zealand Government, 'COVID-19 Vaccine Rollout Plan' (*Unite against COVID-19*, 10 March 2021) <<https://covid19.govt.nz/news-and-data/latest-news/covid-19-vaccine-rollout-plan/>> accessed 9 February 2023.

⁷ Katrina Williams, 'Covid-19: Essential Supermarket Workers Start Getting Vaccinations at Work' (*Stuff*, 25 August 2021) <<https://www.stuff.co.nz/national/health/coronavirus/126165514/covid19-essential-supermarket-workers-start-getting-vaccinations-at-work>> accessed 9 February 2023.

⁸ Shirley V Sylvester and others, 'Sex Differences in Sequelae from COVID-19 Infection and in Long COVID Syndrome: A Review' (2022) 38 *Current Medical Research and Opinion* 1391.

factors often connected with depression and anxiety,⁹ and evidence suggests that the pandemic has aggravated stress and tension in workplaces. Natalie Seymour, Chair of the College of Gerontology Nursing, reported in November 2020 that Covid-19 “had a profound impact on nurses and care staff working in older persons’ care” with “compassion fatigue” from the pandemic causing “higher than usual sick leave, high staff turnover, burnout, job dissatisfaction and increased use of occupational counselling programmes”.¹⁰ As the pandemic progressed, psychological risks have intensified as indicated by Skill’s Consulting Group report of June 2022, which shows that 41 per cent of women compared to 34 per cent of men had experienced burnout.¹¹

Employees in sectors affected by such psychological risks are also less supported by the law to deal with these situations. Dawn Duncan has pointed out that one of the primary mechanisms to compensate for health and safety incidents in the workplace, the Accident Compensation Corporation (ACC), is limited in scope in its application to psychological harm.¹² This is compared to physical injuries, for which ACC is much more geared up for providing compensation. Other forms of redress exist for psychological harm, such as counselling sessions through the Employee Assistance Programme (EAP) and the ability to raise a personal grievance against the employer for not providing a safe work environment. However, Duncan has pointed out that when employees seek such redress, there are considerable barriers in place to financial compensation for these issues, compared to ACC.¹³ Further, under the Health and Safety at Work Act 2015, a WorkSafe investigation is able to be triggered if an accident occurs, which can effect change.¹⁴ However, this is much more likely to be directed at physical accidents. As women are more likely to be congregated in sectors facing psychological risks, they are less equipped by the law to cope with these hazards, which have been gravely exacerbated by the pandemic.

Supermarket frontline workers are a good example of a predominantly female group that have had to deal with both physical and psychological risk factors across the pandemic. They risked exposure to the virus having to work during the lockdowns, and have since had to deal with significant abuse from members of the public which did not reduce as the pandemic progressed. It should further noted that, in 2020, this group only received a temporary and nominal pay increase during first lockdowns, despite the fact that supermarkets gained large profits during this period as the only commercial food source available during the strictest (Alert Level 4) lockdowns.¹⁵

The value of care

There is long-standing evidence that women carry out more unpaid labour than men in the home, including domestic responsibilities such as cleaning, cooking and childcare.¹⁶ The pandemic exacerbated aspects of this dynamic, with the forced closure of schools resulting in

⁹ Dawn Duncan, ‘Invisible Consequences: The Health Hazards of “Women’s Work” in New Zealand’ (2019) 50 Victoria University of Wellington Law Review 341, 343.

¹⁰ Natalie Seymour, ‘Compassion Fatigue Takes Its Toll’ (2020) 26 Kai Tiaki Nursing New Zealand 11, 11.

¹¹ Skills Consulting Group, ‘Burnout - A Business Issue That Can’t Be Ignored’ (2022) 11 <https://skillsconsultinggroup.com/wp-content/uploads/Wellbeing-Index_Burn-Out_final.pdf>.

¹² Duncan (n 9) 352.

¹³ *ibid* 352–353.

¹⁴ *ibid* 355.

¹⁵ Masselot and Hayes (n 1) 59.

¹⁶ Soraya Seedat and Marta Rondon, ‘Women’s Wellbeing and the Burden of Unpaid Work’ (2021) 374 BMJ n1972.

parents having to oversee remote learning of their children.¹⁷ UK data of 2020, for example, demonstrated that mothers undertook 30 per cent more home-schooling duties than fathers.¹⁸ Childcare arrangements also became difficult for essential workers who had to go to work during the lockdowns.¹⁹ Intergenerational care, which otherwise could ease pressure on working mothers, was discouraged to prevent the virus spreading to older high risk groups.²⁰

It was hoped in 2020 that the population staying at home in lockdown would help break down gender norms regarding division of labour by exposing men to unpaid care work.²¹ On the contrary, some research discussed below suggests that gender roles were reinforced during lockdown. Moreover, even if men were more exposed to unpaid care work during the lockdowns, there was always a risk of people slipping into the mindset of getting back to “normal” after Aotearoa | New Zealand relaxed and revoked pandemic-related restrictions, which could have led to people falling back into gendered patterns of work and behaviour.

International evidence about the lasting impact of the lockdowns on gendered unpaid labour has been mixed. Mala Htun reviewed literature from the United States on this point, where one survey promisingly suggested that “men took on more childcare and housework responsibilities during the pandemic”, whereas other evidence suggested that “underlying preferences about the distribution of household labour did not change during the pandemic.”²² In Australia, a study found that men were more likely to take on more childcare responsibilities than they had before, but there was no change regarding other domestic labour, such as cleaning duties as arguably spending time with children is a more rewarding domestic experience than cleaning work.²³ This mixed evidence does not provide any assurance that lockdown contributed to breaking down gender norms regarding unpaid division of labour, and reinforces the need to raise awareness and adopt policies to recognise and value unpaid care and domestic work.²⁴ While lockdowns did not perhaps expressly shift gender norms regarding division of unpaid labour, we have seen a shift in attitudes towards flexible working arrangements which the country had to use to carry on work from home. This article argues further below that flexible working arrangements could be crafted to tackle gendered issues relating to employment, including unpaid labour.

Unemployment

In 2020, women, as a group, became particularly susceptible to losing their jobs as some sectors were unable to operate at their usual level during the pandemic. These sectors included manufacturing, retail, accommodation and food, which predominantly employed women.²⁵ Stats NZ | Tatauranga Aotearoa reported, in August 2020, that out of 11,000 jobs losses across

¹⁷ Masselot and Hayes (n 1) 59.

¹⁸ F Lewsey, ‘Women Bear Brunt of Coronavirus Economic Shutdown in UK and US’ (2020) <<https://www.cam.ac.uk/research/news/women-bear-brunt-of-coronavirus-economic-shutdown-in-uk-and-us>>.

¹⁹ Masselot and Hayes (n 1) 59.

²⁰ *ibid.*

²¹ *ibid.*

²² Mala Htun, ‘Women’s Equality and the COVID-19 Caregiving Crisis’ (2022) 20 *Perspectives on Politics* 635, 638.

²³ Lyn Craig and Brendan Churchill, ‘Dual-earner Parent Couples’ Work and Care during COVID-19’ (2021) 28 *Gender, Work & Organization* 66, 75.

²⁴ Masselot and Hayes (n 1) 69.

²⁵ *ibid* 59.

the June 2020 quarter, 10,000 of these were jobs held by women.²⁶ This shows that the initial impact of the pandemic in its early stages had a significantly disproportionate impact on women. In November 2020, Stats NZ | Tatauranga Aotearoa reported again data which confirmed that women's employment was strongly affected, with an overall analysis indicating that across the March 2020 and September 2020 quarters, 33,000 jobs had been lost, with two-thirds of this (22,000) being jobs held by women.²⁷

Despite the early disproportionate job loss, the gap between women and men's unemployment reduced in the second year of the pandemic. In the September 2021 quarter, Stats NZ | Tatauranga Aotearoa reported that women in employment rose by 39,000 (compared to 15,000 men), being the largest increase on record.²⁸ In December 2020, the gap between women and men's unemployment was measured at 0.9 per cent, however, by December 2021 this had shrunk to 0.2 per cent.²⁹ While this decrease in disparity between women and men in employment is encouraging, there are aspects of this which still need to be scrutinised further. For example, even though more women are working again, it would be interesting to evaluate how the initial shock of disproportionate job losses affected women and their careers. Indeed, an early report suggests that, although women have re-entered paid employment, they are increasingly working in precarious jobs.³⁰ The trend in lower quality of female employment is supported by overseas studies. In 2020, Deloitte conducted a survey of women across several countries and found that 70 per cent of them felt like their career progression would slow down following the impact of the pandemic.³¹ Studies from the United States further reported that "one in four women considered leaving their professions or downsizing their careers".³²

Gender and old age

Financial hardship in 2020 led to an increase in people accessing their Kiwisaver funds early, following the relaxation of the rules to access such funds in response to people financially struggling with the pandemic.³³ While this would have eased financial pressure at the time, this could contribute to increase the gender pay gap, particularly in old age as women are already in a worse position to contribute to savings as they earn less, have less job security and have less access to social protection.³⁴ The loosening of rules for early access could affect women in old age when they most need those savings.

²⁶ Stats NZ | Tatauranga Aotearoa, 'COVID-19 Lockdown Has Widespread Effects on Labour Market' (5 August 2020) <<https://www.stats.govt.nz/news/covid-19-lockdown-has-widespread-effects-on-labour-market>>.

²⁷ Stats NZ | Tatauranga Aotearoa, 'COVID-19's Impact on Women and Work' (November 2020) <<https://www.stats.govt.nz/news/covid-19s-impact-on-women-and-work>>.

²⁸ Stats NZ | Tatauranga Aotearoa, 'Labour Market Statistics: September 2021 Quarter' (November 2021) <<https://www.stats.govt.nz/information-releases/labour-market-statistics-september-2021-quarter>>.

²⁹ Stats NZ | Tatauranga Aotearoa, 'Labour Market Statistics: December 2020 Quarter' (February 2021) <<https://www.stats.govt.nz/information-releases/labour-market-statistics-december-2020-quarter>>; Stats NZ | Tatauranga Aotearoa, 'Labour Market Statistics: December 2021 Quarter' (February 2022) <<https://www.stats.govt.nz/information-releases/labour-market-statistics-december-2021-quarter>>.

³⁰ Sarah Robson, 'More Women Working in "Precarious Jobs"' (RNZ, 14 June 2021) <<https://www.rnz.co.nz/news/national/444662/more-women-working-in-precarious-jobs>> accessed 9 February 2023.

³¹ Deloitte, 'Understanding the Pandemic's Impact on Working Women: How Employers Can Act Now to Prevent a Setback in Achieving Gender Parity in the Workplace' (2020) <<https://www2.deloitte.com/global/en/pages/about-deloitte/articles/understanding-the-pandemics-impact-on-working-women.html>>.

³² Htun (n 22) 638; Sarah Coury and others, 'Women in the Workforce 2020 (Technical Report)'.

³³ Inland Revenue, 'COVID-19 Kiwisaver' (2020) <<https://www.ird.govt.nz/covid-19/individuals-and-families/kiwisaver>>.

³⁴ Masselot and Hayes (n 1) 60.

Since 2020, further research has been conducted into the gender disparity of KiwiSaver. Te Ara Ahunga Ora Retirement Commission reported, in April 2022, that the average KiwiSaver balance of men is 20 per cent higher than that of women.³⁵ This gap is widened further in the 40 – 50 year and 50 – 60 years age brackets, with women in the former group having 30 per cent less in savings than men and women in the latter having 32 per cent less savings than men,³⁶ confirming that women in Aotearoa | New Zealand are significantly disadvantaged in relation to KiwiSaver. The New Zealand Institute of Economic Research further found four key drivers of KiwiSaver gender inequalities; namely, gaps between men and women in labour force, pay equity, career continuity (including the impact of motherhood), as well as a lack of confidence and knowledge relating to KiwiSaver.³⁷ The compounded effect of gender labour disparities means that, where loosening the rules of early access is warranted on the basis of an economic crisis, for instance, the impact of this is particularly damaging to women, who are likely to fewer funds to access in the first place, as well as depleting their future resources.

The cost-of-living crisis

The economic impact of the Covid-19 pandemic, alongside other international factors, including the Russian invasion of Ukraine, has contributed to a cost-of-living crisis seen globally, but also apparent in Aotearoa | New Zealand. Stats NZ | Tatauranga Aotearoa reported a 5.2 per cent increase in the cost of living for households in Aotearoa | New Zealand in 2021,³⁸ and an annual inflation of 7.2 per cent in 2022, a 30-year high.³⁹ The cost-of-living crisis poses a problem for low-waged workers, who are in the worst position to absorb price increases for resources essential for life. Again, this results in a gendered impact on women because of their congregation in low paid sectors. A 2022 Westpac survey of 1600 customers showed that women were consistently more worried than men about the impact of the crisis on their finances.⁴⁰ Research from the UK shows that women are more likely to spend money on domestic essential items, such as cleaning products and food “which are typically more susceptible to inflation-induced volatility”.⁴¹ All of this points to a wider issue of women consistently bearing the brunt of economic crises. A 2019 study, conducted across 68 countries, examined the gender impact of financial crises between the years of 1980 and 2010, looking specifically at the areas of employment, education, health and political representation, and found that women suffered negative impacts across all areas from various financial crises.⁴² The data also showed that women suffer detrimental impacts in both the immediate stages of

³⁵ Te Ara Ahunga Ora Retirement Commission, ‘KiwiSaver Balances’ (2022) 1 <<https://retirement.govt.nz/news/latest-news/new-data-reveals-for-the-first-time-largest-breakdown-of-kiwisaver-balances-across-all-ages-and-genders/>>>.

³⁶ *ibid* 2.

³⁷ New Zealand Institute of Economic Research, ‘KiwiSaver Equity for Women: Building Long-Term Financial Wellbeing’ (2022) <<https://www.nzier.org.nz/publications/kiwisaver-equity-for-women-building-long-term-financial-wellbeing/>>.

³⁸ Stats NZ | Tatauranga Aotearoa, ‘Increase in Cost of Living Reaches New High’ (10 February 2022) <<https://www.stats.govt.nz/news/increase-in-cost-of-living-reaches-new-high/>>.

³⁹ Stats NZ | Tatauranga, ‘Annual Inflation Remains at 7.2 Percent’ (25 January 2023) <<https://www.stats.govt.nz/news/annual-inflation-remains-at-7-2-percent/>>.

⁴⁰ Westpac, ‘New Zealanders Confident They Can Cope with Rising Prices, Survey Finds’ (8 April 2022) <<https://www.westpac.co.nz/about-us/media/new-zealanders-confident-they-can-cope-with-rising-prices-survey-finds/>>.

⁴¹ Living Wage Foundation, ‘Low Paid Work and Cost-Of-Living-Crisis Disproportionately Affecting Women’ (8 March 2022) <<https://www.livingwage.org.uk/news/cost-living-crisis-affecting-women/>>.

⁴² Robert Blanton, Shannon Blanton and Dursun Peksen, ‘The Gendered Consequences of Financial Crises: A Cross-National Analysis’ (2019) 15 *Politics & Gender* 941, 964–966.

the crises, as well as in longer-term continuing once the crises have ended.⁴³ The cost-of-living crisis on the tail of the Covid-19 pandemic highlights a need to take action to prevent such ongoing gendered impacts in already difficult times.

Violence and Abuse

The pandemic has exacerbated gender violence in Aotearoa | New Zealand, which already has one of the worst rates of intimate partner violence in the world.⁴⁴ Lockdowns effectively trapped victims of intimate partners with their abusers and removed pathways to help from wider friends and network or from access to health services which screen for such violence. If early community engagement and the implementation of police practices designed to improve perceptions of trust and legitimacy provided support to victims, these have discontinued post-pandemic leaving victims in situations of uncertainties.⁴⁵ In addition, increase of abusive behaviour at work, particularly for workers in essential services, has represented an ongoing feature of the pandemic, with people taking their frustrations about the pandemic and various government responses out on essential service workers. In February 2022, the Corporate Affairs Manager of Woolworths New Zealand discussed in the media how Countdown staff were bearing the brunt of Covid-related anger with “people not wearing masks with impunity, abusing our team, swearing spitting, threatening to kill, every single day still”.⁴⁶

Impact of Covid-19 on Māori and Pacific Women in Aotearoa | New Zealand

The gendered impacts of the pandemic on employment requires an intersectional approach because gender and ethnicity can yield a unique compounded negative impact on some groups of people. This is particularly true in the context of Aotearoa | New Zealand, where wāhine Māori and Pasifika suffer from the greatest disparity within social systems and institutions, such as the gender pay gap.⁴⁷ Ongoing features of the pandemic since 2020 have contributed to further inequalities, in particular relation to health, including lack of access to healthcare and socioeconomic conditions linked to chronic conditions, such as cardiovascular health, making these groups more vulnerable to Covid-19.

The implementation of the vaccination rollout turned out to be problematic for Māori and Pasifika people. This population is younger than the Pākehā population which meant that a large proportion of these groups were excluded from accessing the vaccine until they fell within the age range eligible to receive the vaccine, resulting in a lower vaccination rate for a long period of time.⁴⁸ These are highly relevant inequalities as health issues are closely linked to employment in that poor health could impact someone’s ability to obtain or maintain employment, in turn affecting their financial circumstances.

⁴³ *ibid* 965.

⁴⁴ Masselot and Hayes (n 1) 60; Family Violence Death Review Committee, ‘Fourth Annual Report: January 2013 to December 2013’ (Health Quality and Safety Commission) <<https://www.hqsc.govt.nz/assets/FVDRC/Publications/FVDRC-4th-report-June-2014.pdf>>.

⁴⁵ Nicholas Evans, ‘Policing the Pandemic in Australia and New Zealand: Lessons for Trust and Legitimacy’ (2022) ahead-of-print *Journal of Criminological Research, Policy and Practice*.

⁴⁶ Radio New Zealand, ‘Staff Facing More Abuse from Customers than Ever - Countdown’ (*RNZ*, 24 February 2022) <<https://www.rnz.co.nz/news/covid-19/462203/staff-facing-more-abuse-from-customers-than-ever-countdown>> accessed 10 February 2023.

⁴⁷ ‘It’s Not Just a Gender Pay Gap’ (*Gender Equal NZ*) <<https://genderequal.nz/datastories/not-just-gender-pay-gap/>> accessed 10 February 2023.

⁴⁸ Katrina Megget, ‘How New Zealand’s Covid-19 Strategy Failed Māori People’ (2022) 376 *BMJ* o180, 2.

New – a non-binary gendered analysis

The language of “women” and “men” is helpful to illustrate gender inequalities of the pandemic drawn from the available literature, but a true intersectional analysis of the matter would acknowledge that gender is not binary. A range of gender nuanced impacts on the LGBTQIA+ community cannot appropriately be captured by binary language. In their analysis of the gender gaps in Covid-19 decision making in the global community, Kim Robin van Daalen et al, show that “promoting and integrating mechanisms that ensure inclusive intersectional data collection is one of the systemic changes needed for fair governance”.⁴⁹ The lack of appropriate data means that the full effect of the pandemic across genders remains limited. Adequate mainstream processes of data collection must be implemented, particularly with respect to specific topics, such as employment matters.

Despite the lack of systemic data collection, evidence shows that the LGBTQIA+ community has been particularly vulnerable to the Covid-19 pandemic. Research conducted in 2021 into the “experiences of COVID-19 for takatāpui, queer, gender diverse, and intersex young people aged 16 – 24” found that young people in these groups suffered from significant mental distress which was worsened by the pandemic.⁵⁰ In terms of employment matters, 26 per cent of this group discussed difficulties with obtaining employment during the pandemic, citing discrimination as a key concern.⁵¹ These results show a degradation of an already poor situation outlined in the 2019 survey.⁵²

II. Te Mahere Whai Mahi Wāhine | Women’s Employment Action Plan

The key features of the Government’s response to the pandemic on employment in Aotearoa | New Zealand included:⁵³ the development of an Economic Recovery Plan, containing a \$50 billion fund established to target unemployment; \$3.3 billion invested into infrastructure projects with the goal of job creation in the construction industry; and the allocation of more funding for services which tackle domestic violence.

While these measures were generally helpful to combat consequences of the pandemic relating to employment, they lacked a gendered approach.⁵⁴ The Ministry for Women has since recognised that “the underlying labour market disadvantages women face have been exacerbated by COVID-19” and has consequently initiated the development of a Women’s Employment Action Plan.⁵⁵ *Te Mahere Whai Mahi Wāhine Women’s Employment Action Plan*

⁴⁹ Kim Robin van Daalen and others, ‘Symptoms of a Broken System: The Gender Gaps in COVID-19 Decision-Making’ (2020) 5 *BMJ Global Health* 1, 14.

⁵⁰ Julie Radford Poupard, ‘Experiences of COVID-19 for Takatāpui, Queer, Gender Diverse, and Intersex Young People Aged 16-24’ (Point & Associates 2021) 10.

⁵¹ *ibid* 12.

⁵² Jaimie Veale and others, ‘Counting Ourselves - The Health and Wellbeing of Trans and Non-Binary People in Aotearoa New Zealand’ (Transgender Health Research Lab 2019) 89.

⁵³ Masselot and Hayes (n 1) 62–63.

⁵⁴ *ibid*.

⁵⁵ Ministry for Women, ‘Building Resilience for Women - COVID-19 and Beyond’ (2021) Cabinet Paper 4 <https://women.govt.nz/sites/public_files/Cabinet%20paper%20Minister%20Tinetti%20-%20Building%20Resilience%20for%20Women%20-%20COVID-19%20and%20Beyond%20-%20released%2025%20May%202021.pdf>.

(2022)⁵⁶ (the plan) takes into consideration the impacts of the pandemic to tailor gender responses. In addition, a number of measures were adopted to address issues relating to employment including:

- wage subsidies during lockdowns to support the income of employees;⁵⁷
- the Training Incentive Allowance;⁵⁸
- the Flexi-Wage to support jobseekers attaining skills while working;⁵⁹
- extension of the sick leave provisions from five days to 10 days;⁶⁰
- change in the Procurement Rule to direct government spending into areas which would support groups otherwise facing low unemployment;⁶¹
- allocation of an additional \$140 million in funding for Māori and Pasifika health providers to tackle the Omicron variant in these communities;⁶² and
- the implementation of the Equal Pay Amendment Act 2020 and the Fair Pay Agreements Act 2022.

Aspects of these measures are likely to have positive gendered effects. For example, investment directed from the Covid-19 Recovery and Response Fund into the Training Incentive Allowance is aimed at equipping groups, such as sole parents and carers, both predominantly female, to improve professional skills. The procurement rule was amended to specifically “[create] employment opportunities for women, Māori, Pacific peoples, disabled people and youth”.⁶³ Not all of these measures were necessarily invoked in response to the pandemic. For example, the passing of the Equal Pay Amendment Act 2020 and the introduction of the Fair Pay Agreements Bill 2022 were both being considered by the Government before the pandemic.⁶⁴ However, these measures hold promise to be effective against gender inequalities in the workplace either highlighted or exacerbated by the pandemic.

⁵⁶ Ministry for Women, ‘Te Mahere Whai Mahi Wāhine Women’s Employment Action Plan’ (2022) <https://women.govt.nz/sites/public_files/Te%20Mahere%20Whai%20Mahi%20W%20C4%81hine%20Women%E2%80%99s%20Employment%20Action%20Plan%202022.pdf>.

⁵⁷ Grant Robertson and Carmel Sepuloni, ‘Targeted Extension to the Wage Subsidy Scheme’ (2020) Press Release <<https://www.beehive.govt.nz/release/targeted-extension-wage-subsidy-scheme>> accessed 10 February 2023.

⁵⁸ Carmel Sepuloni, ‘Training Incentive Allowance to Support 16,000 New Zealanders into Jobs’ (2021) Press Release <<https://www.beehive.govt.nz/release/training-incentive-allowance-support-16000-new-zealanders-jobs>> accessed 10 February 2023.

⁵⁹ Carmel Sepuloni, ‘Govt’s Economic Recovery Continues with 20,000 Flexi-Wage Placements’ (2022) Press Release <<https://www.beehive.govt.nz/release/govt%E2%80%99s-economic-recovery-continues-20000-flexi-wage-placements>> accessed 10 February 2023.

⁶⁰ Holidays (Increasing Sick Leave) Amendment Act 2021 s 4.

⁶¹ Phil Twyford, Nanaia Mahuta and Aupito William Sio, ‘Procurement to Promote Jobs, Māori and Pasifika Businesses and Sustainability’ (2020) Press Release <<https://www.beehive.govt.nz/release/procurement-promote-jobs-m%C4%81ori-and-pasifika-businesses-and-sustainability>> accessed 10 February 2023.

⁶² Kelvin Davis, Peeni Henare and Willie Jackson, ‘Govt Ensures Extra Support for Māori and Pacific Omicron Response’ (2022) Press Release <<https://www.beehive.govt.nz/release/govt-ensures-extra-support-m%C4%81ori-and-pacific-omicron-response>> accessed 10 February 2023.

⁶³ New Zealand Government Procurement, ‘Rule 18A: Quality Employment Outcomes’ <<https://www.procurement.govt.nz/procurement/principles-charter-and-rules/government-procurement-rules/planning-your-procurement/quality-employment-outcomes/>>.

⁶⁴ Iain Lees-Galloway and Julie Anne Genter, ‘Government to Consider Recommendations for Pay Equity Principles’ (2018) Press Release <<https://www.beehive.govt.nz/release/government-consider-recommendations-pay-equity-principles>> accessed 10 February 2023; Ministry of Business, Innovation and Employment, ‘Designing a Fair Pay Agreements System: Discussion Paper’ (2019) <<https://www.mbie.govt.nz/dmsdocument/7041-designing-a-fair-pay-agreements-system-discussion-paper>>.

In the introduction section of the plan, Minister for Women, Jan Tinetti, and Chair of the National Advisory Council on the Employment of Women, Traci Houpapa acknowledge that women were significantly impacted by the Covid-19 pandemic. On this basis, the plan identifies areas of change designed to contribute to success for women to improve employment pathways. Women who are marginalised at work are specifically targeted, particularly wāhine Māori, Pacific women, young and older women, disabled women, women who are former refugees and recent migrants, and LGBTQIA+.

It focusses on three main area of change, namely: financial security; labour market inclusivity; and work-life balance. Success area one focusses on key financial disadvantages to women in the workforce and identifies improving pay transparency as an immediate action, implementing fair pay agreements and eliminating the gender pay gap in the public sector as a medium-term action.⁶⁵ Success area two contains the bulk of the action plan. It proposes a range of actions to remove barriers to the workforce, including improving data collection relating to women's engagement with employment such as training and education; as well as research into types of wraparound support that could be provided to "wāhine Māori, Pacific women, disabled women and sole mothers in employment programmes".⁶⁶ Finally, success area three identifies three measures to support work-life balance by improving access to affordable childcare for all women as well as specifically for wāhine Māori in business; and by investigating the extension of paid parental leave to spouses and partners of new mothers.⁶⁷

While acknowledgement of gender issues lends legitimacy to the matter, the plan remains elusive. It lacks specific actions around implementation of time frames and monitoring framework. Although designed to improve gender issues in employment, the plan fails to identify concrete steps as many measures concerns merely a gathering of further information. For example, all of the measures in Success Area Three are framed as plans to "investigate potential" or conduct "research" into ways to ensure women are supported to meet their paid and unpaid work commitments without incurring penalties.⁶⁸ While this work is important, significant progress on these issues is unlikely to occur in the short term. Nevertheless, some measures, such as the implementation of fair pay agreements, have been adopted and are expected to bring significant change for women.

Promisingly, the plan takes an intersectional approach to Māori and Pasifika women in employment, with approximately one third of the prescribed actions specifically mentioning wāhine Māori, Pasifika women or both. The plan acknowledges the LGBTQIA+ community. It recognises the vulnerability of this group in facing discrimination in employment and prescribes improvement of both data collection and reporting, as well as investigation in education and training programmes for LQBTQIA+.⁶⁹ The plan contributes to initiating discussion but will require supplementary and tangible actions to ensure the removal of barriers faced by gender diverse people in employment.

⁶⁵ Ministry for Women (n 57) 3.

⁶⁶ *ibid* 4–6.

⁶⁷ *ibid* 7.

⁶⁸ *ibid*.

⁶⁹ *ibid* 63.

III. Reframing Employment Law and Policy in a Post-Pandemic Environment

Progress in gender equality in the workplace in a post-pandemic environment is likely to result from flexible working arrangements; the implementation of the Fair Pay Agreement legislation; and a firm establishment of Gender Mainstreaming.

Encouraging equal use of Flexible Work Arrangements

Employees have the right to make a request to their employer for flexible arrangements under the Employment Relations Act 2000.⁷⁰ Working flexibly refers to a wide range of working options, including the ability of an employee to work from home and/or work flexible hours, and can extend to a variety of terms and conditions of employment, such as paid or unpaid leave arrangements, job-sharing, and condensed work weeks. The adoption of the provision on flexible working arrangements in 2007 led to apprehensions from employers, who argued that such right conflicts with the social construct of the “ideal worker”,⁷¹ who prioritises work above other responsibilities and leisure. The importance of the employer’s control over employees’ work has meant that employers have been inclined to request physical attendance at a traditional office/workplace setting, where employees are visible and their time at work can be accounted for. There was suspicion that, for example, workers would be less productive at home if they were not under supervision in a controlled physical workplace environment.⁷² Yet requirement for physical presence and rigid working hours tends to conflict with care obligations, which are disproportionately carried out by women. Consequently, women are often unable to fulfil the “ideal worker” construct as it is more consistent with the male breadwinner model.⁷³ These gendered norms explain why women are more likely to prefer flexible working arrangements,⁷⁴ and why they pay a penalty⁷⁵ for deviating from the “unencumbered worker” model.⁷⁶

The pandemic has contributed to shift perceptions about flexible working arrangements. During lockdown, employers were able to rely on their employees to carry out work from home. Evidence shows that flexible working arrangements benefits employers as it has been linked to improved productivity, retention of current employees and attraction of new employees.⁷⁷ This is good news from a gender perspective, as flexible working arrangements could be the pathway to reducing gender inequalities in the workforce.

⁷⁰ Employment Relations Act 2000 pt 6AA.

⁷¹ Yuka Fujimoto, Fara Azmat and Charmine EJ Härtel, ‘Gender Perceptions of Work-Life Balance: Management Implications for Full-Time Employees in Australia’ (2013) 38 Australian Journal of Management 147, 151.

⁷² Heejung Chung, *The Flexibility Paradox* (Bristol University Press 2022) 121.

⁷³ *ibid* 151.

⁷⁴ *ibid* 161.

⁷⁵ Charlotte O’Brien, ‘Confronting the Care Penalty: The Case for Extending Reasonable Adjustment Rights along the Disability/Care Continuum’ (2012) 34 Journal of Social Welfare and Family Law 5.

⁷⁶ Grace James, *The Legal Regulation of Pregnancy and Parenting in the Labour Market* (Routledge-Cavendish 2011) <<https://www.routledge.com/The-Legal-Regulation-of-Pregnancy-and-Parenting-in-the-Labour-Market/James/p/book/9780415685450>> accessed 9 February 2023.

⁷⁷ Marissa Mackie, ‘Flexible Working. It Worked during COVID: Why Shouldn’t We Do It Now?’ [2021] The Bulletin - Law Society of South Australia <https://issuu.com/lawsocietysa/docs/lsb_march_2021_hr/s/11841394>.

Change in paid work is unfortunately not enough to achieve gender equality. The breakdown of the “ideal worker” norm requires that, in addition, men shoulder more of the care and domestic unpaid labour currently undertaken by women. Nevertheless, it is estimated that shifts toward gender neutral work patterns would not only ease pressure on women work-life balance, but it would also significantly benefit the economy. Indeed, Deloitte estimates that an equal division of labour at home would provide a \$1.5 billion dollar boost to Aotearoa | New Zealand’s economy.⁷⁸

However, flexible working arrangements are not the panacea to gender inequity. There are concerns, for instance, that flexible working arrangements contribute to perpetuate harmful gender norms regarding unpaid labour. While flexible working arrangements, particularly part-time work, allow women access to the workforce in addition to their care commitments, it does not change the status quo of gendered patterns of labour. Men typically make use of flexible working arrangements to fulfil the “ideal worker” construct rather than to do more unpaid care work. A comprehensive study conducted by Heejung Chung in the UK shows that there are several aspects of flexible working arrangements that could improve gender inequities of unpaid division of labour, such as “tag-team” parenting where one parent takes part of the morning off to drop children off at school while the other parent takes part of the afternoon off to pick them up.⁷⁹ However, several studies showed, in contrast, that women are more likely to use flexible working arrangements to work around other domestic responsibilities, such as childcare or housework, in contrast to men who typically do not use flexible work arrangements for such motives.⁸⁰ Such gender choices also impact the types of flexible working arrangements offered by employers who are more likely, for instance, to offer part-time to female workers in contrast to giving digital devices to male employees.⁸¹ Access to flexible work arrangements in itself can be gendered in nature. Research from Australia conducted by Yuka Fujimoto et al, showed that men were more likely to get the benefit of informal flexible working arrangements, such as autonomy over the number of hours they work without having to seek this arrangement through a formal process.⁸²

While, working from home is seen by many as a solution to balancing work with family and personal life, it can also lead to unrealistic expectations of multi-tasking with both paid and unpaid labour. This is particularly relevant for women who are expected to continue doing unpaid tasks while delivering paid work at home. Stella R. Quah draws together literature to explain the concept of role compartmentalisation as a “person’s ability to separate multiple roles, both in time and space, in order to manage the different – and often contradictory – demands of each role more effectively thus reducing role strain”.⁸³ She argues that “role performance and mental well-being are very likely to be impaired if the person cannot separate

⁷⁸ ‘Westpac New Zealand Sharing the Load Report’ (May 2021) 3

<<https://www2.deloitte.com/nz/en/pages/economics/articles/westpac-new-zealand-sharing-the-load-report.html>>.

⁷⁹ Chung (n 73) 110.

⁸⁰ *ibid* 111–112.

⁸¹ Dirk Hofäcker and Stefanie König, ‘Flexibility and Work-life Conflict in Times of Crisis: A Gender Perspective’ (2013) 33 *International Journal of Sociology and Social Policy* 613.

⁸² Fujimoto, Azmat and Härtel (n 72) 161.

⁸³ Stella R Quah, ‘Wrestling with Role Strain in a Pandemic: Family, “Stay-at-Home” Directive, and the COVID-19 Pandemic’ (2020) 51 *Journal of Comparative Family Studies* 236, 238.

those roles in time and/or space.”⁸⁴ In turn, blurred boundaries can result in women undertaking even more work.⁸⁵

While flexible work arrangements can be complicit in continuing gender norms, without it, women are often unable to access or remain in the labour market.⁸⁶ Time out of the workforce has been shown to be an aggravating driver of inequality between men and women as illustrated by wage penalty associated with motherhood.⁸⁷ Thus, women are placed in this paradox of needing flexible work arrangements to participate in the labour markets, but face disadvantage because flexible work arrangements cater to traditional gender norms. A change of paradigm is, therefore, required so that flexible work arrangements can contribute to gender equality instead of hindering its achievement. The “ideal worker” norm clashes with flexible work and disincentives men’s contribution to unpaid labour. Indeed, the “ideal worker” norm is problematic and harmful to everyone, as men feel dissatisfied with pressure to work long hours, while women are subjected to disproportionate unpaid work.⁸⁸ To shift the paradigm, Yuki Fujimoto et al. propose six “gender-sensitive management principles”,⁸⁹ which cover the creation of a workplace family-friendly culture; the discretion for male and female employees to manage their total flexible working hours; an increase awareness of managers to daily gendered needs in and out of the workplace; education and training for managers and employees on work-life balance; job-sensitive performance review for men; and holistic life-sensitive performance review for women.⁹⁰

Current Aotearoa | New Zealand legislation on flexible working arrangements might have become outdated in the midst of changes in working patterns following the pandemic. June Hardacre argues that part 6AA of the Employment Relations Act 2000 has become too cumbersome and inflexible.⁹¹ Establishing flexibility as a principle would reflect the actuality of flexible working arrangements and guarantee certainty to employees who make such a request. This could boost confidence for employees of all genders wanting to work flexibly.

Evidence from overseas shows that law and policy can contribute to encouraging men to commit more time to unpaid labour. Norway, for instance, introduced a “fathers’ quota” policy in 1993 which resulted in massive increase of fathers taking paternity leave.⁹² This has also been linked to fathers participating in more housework.⁹³ Evidence from Germany has directly attributed women’s attachment to the workforce after childbirth with their partner’s capacity to utilise flexible working arrangements to carry out “domestic and childcare

⁸⁴ *ibid.*

⁸⁵ Chung (n 73) 112.

⁸⁶ *ibid* 113.

⁸⁷ David Baker, ‘Maternity Leave and Reduced Future Earning Capacity’ [2011] Australian institute of Family Studies 82, 86–87.

⁸⁸ Fujimoto, Azmat and Härtel (n 72) 156.

⁸⁹ *ibid* 165.

⁹⁰ *ibid.*

⁹¹ June Hardacre, ‘COVID-19 and the Workplace: What Now?’ [2022] Lexis Nexis Employment Law Bulletin 10.

⁹² Htun (n 22) 639.

⁹³ *ibid*; Sara Cools, Jon H Fiva and Lars J Kirkebøen, ‘Causal Effects of Paternity Leave on Children and Parents: Causal Effects of Paternity Leave on Children and Parents’ (2015) 117 The Scandinavian Journal of Economics 801, 804.

responsibilities”.⁹⁴ Better access, affordability and quality of childcare,⁹⁵ and increase of women in positions of leadership can also contribute to change in attitude.⁹⁶

Pay Equity as a key component to gender equality

The pandemic has revealed that those in low-paid sectors are more likely to feel compounded effects in times of crisis. While the Government has taken measures to upskill those who are disadvantaged in the labour markets, female employees who congregate in low-paid sectors are still at a disadvantage if their working conditions are unfair and their pay is undervalued. There is a clear gender aspect to this, as work predominantly carried out by women has been historically undervalued, which is compounded by the effects of the pandemic crisis. The undervaluation of women’s work was recently recognised through the Equal Pay Amendment Act 2020, which allows employees to raise a pay equity claim on the premise that they are not getting equal pay for comparable work.⁹⁷

Legal reform on pay equity was complemented by the adoption of the Fair Pay Agreements Act 2022, which aim to “improve wages and conditions for employees, encourage businesses to invest in training, and level the playing field so that employers who are trying hard to offer fair terms don’t get undercut and disadvantaged”.⁹⁸ The legislation is expected to impact female workers who worked in the frontline during the pandemic, such as supermarket workers. These workers are often on minimum wages and isolated. Sector level bargaining is likely to increase their bargaining under fair pay agreements.⁹⁹

The Fair Pay Agreements Act 2022 entered into force on 1 December 2022 and provides that a union can initiate the fair pay bargaining process if it gets support from either 1000 employees or 10 per cent of employees in the relevant sector, (whichever number is smaller) or if the union’s application meets a public interest test.¹⁰⁰ Parties must then decide on key matters relating to pay although discussion can be broader. When the bargaining process is initiated, the parties must discuss the topic of flexible work arrangements, among other topics, such as health and safety, leave entitlements, and redundancy.¹⁰¹ While it does not inherently solve the issue of women using flexible working arrangements to fulfil gendered unpaid labour commitments, it instructs parties to have a conversation about flexible working arrangements, which is likely to result in positive outcomes. Ultimately, it lends legitimacy to the existence of flexible working arrangements and gives workers a chance to discuss issues related to flexible working arrangements, in which gender matters could be raised.

⁹⁴ Sandra Buchler and Katharina Lutz, ‘Fathers’ Job Flexibility and Mothers’ Return to Employment’ (2021) 37 *European Sociological Review* 659, 669.

⁹⁵ Danielle Wood, Kate Griffiths and Owain Emslie, ‘Permanently Raising the Child Care Subsidy Is an Economic Opportunity Too Good to Miss’ (*The Conversation*) <<https://theconversation.com/permanently-raising-the-child-care-subsidy-is-an-economic-opportunity-too-good-to-miss-136856>>.

⁹⁶ Paola Profeta, ‘Gender Equality and Public Policy during COVID-19’ (2020) 66 *CESifo Economic Studies* 365, 371–372.

⁹⁷ Amanda Reilly, Avalon Kent and Annick Masselot, ‘Pay Equity Bargaining in New Zealand’ (2022) *Dispatch* No. 43 *Comparative Labor Law and Policy Journal* <<https://cllpj.law.illinois.edu/content/dispatches/2022/Dispatch-No.-43.pdf?version=2?>>.

⁹⁸ Michael Woods, ‘A Major Step towards a Fairer System for New Zealand Workers’ (2022) *Press Release* <<https://www.beehive.govt.nz/release/major-step-towards-fairer-system-new-zealand-workers>>.

⁹⁹ Richard Wagstaff, ‘Fair Pay Agreements’ [2021] *Lexis Nexis Employment Law Bulletin* 42.

¹⁰⁰ *Fair Pay Agreements Act 2022* ss 27–29.

¹⁰¹ *ibid* 125.

Gender sensitive tools in policy/decision making

The harmful gendered effects of the pandemic have emphasised a need to ensure that gender sensitive tools, such as gender mainstreaming, are well-established to inform policy response. United Nations Women describes gender mainstreaming as:¹⁰² “ensuring that gender perspectives and attention to the goal of gender equality are central to all activities – policy development, research, advocacy/dialogue, legislation, resource allocation, and planning implementation and monitoring of programmes and projects.”

Gender mainstreaming is crucial in both the immediate response to a crisis and in the long-term strategy for recovery. In times of crisis, policy makers need to make quick decisions that significantly impact the population. Disasters and crises affect people differently depending on their capabilities, resources and opportunities. The more vulnerable a group, the more likely it will suffer from disasters or crises.¹⁰³ In addition, disaster and vulnerability feed each other, as the “negative effects are multiplied for some vulnerable groups and minimised for other, usually better-resourced, groups”.¹⁰⁴ Gender mainstreaming is important at this stage in order to narrow gender inequalities that could stem from these big decisions in times of crises.¹⁰⁵ The lack of gender mainstreaming during the first stage of the pandemic in Aotearoa | New Zealand and elsewhere¹⁰⁶ led to investment in the male-dominated construction industry when, in reality, job losses were disproportionately felt by women. A gender mainstreaming approach could have led to different investments in, for instance, the healthcare systems and social infrastructure, which would yield better results for gender equality in employment,¹⁰⁷ as well as higher fiscal returns.¹⁰⁸ Further, a care-led recovery response would not exclude construction related jobs as the improvement of the healthcare systems could lead to the improvement of physical infrastructure.¹⁰⁹

The questions of gender and other nexuses that would inform an intersectional approach, such as race or sexuality, are considered an after-thought in the context of emergency response. Yet, a lack of gender analysis, risks entrenching existing inequalities and vulnerabilities. Gender mainstreaming provides policy makers with tools to consider the gendered impacts of their proposed measures and assess whether there needs to be immediate steps taken to mitigate these impacts. Policy response to the increase of domestic violence during the initial lockdown response provides a good illustration of the benefit of using gender mainstreaming. A gender analysis led to the adoption of specific measures in the European Union, such as increased awareness campaigns, designation of shelters as essential services and temporary help stations

¹⁰² UN Women: United Nations Entity for Gender Inequality and the Empowerment of Women, ‘Gender Mainstreaming’ <<https://www.un.org/womenwatch/osagi/gendermainstreaming.htm>> accessed 10 February 2023.

¹⁰³ Eric Neumayer and Thomas Plümper, ‘The Gendered Nature of Natural Disasters: The Impact of Catastrophic Events on the Gender Gap in Life Expectancy, 1981–2002’ (2007) 97 *Annals of the Association of American Geographers* 551.

¹⁰⁴ Jacqui True, ‘Gendered Violence in Natural Disasters: Learning from New Orleans, Haiti and Christchurch’ (2016) 25 *Aotearoa New Zealand Social Work* 78, 80.

¹⁰⁵ Annick Masselot, ‘Feminist Perspective on Natural Disaster Responses: Lessons from the Canterbury Earthquakes’ [2022] *New Zealand Women’s Law Journal* 24.

¹⁰⁶ Jérôme De Henau and Susan Himmelweit, ‘A Care-Led Recovery From Covid-19: Investing in High-Quality Care to Stimulate And Rebalance The Economy’ (2021) 27 *Feminist Economics* 453, 454.

¹⁰⁷ *ibid* 466.

¹⁰⁸ *ibid* 467.

¹⁰⁹ *ibid*.

set up in supermarkets.¹¹⁰ In Aotearoa | New Zealand, the Government took relatively quick action in this area, announcing a \$200 million dollar boost to domestic and sexual violence services in the 2020 budget.¹¹¹ Gender mainstreaming is also critical as an ongoing feature in the long-term response to a crisis. In this respect, the Aotearoa | New Zealand's gender response has improved as the pandemic has progressed, including the re-introduction of the Training Incentive Allowance and development of the *Te Mahere Whai Mahi Wāhine Women's Employment Action Plan*. However, as new challenges from the pandemic emerge and new crises loom, it is easy for gender analyses to slip aside, as illustrated by the gaps in the vaccination rollout programme.

Ensuring that gender mainstreaming is a part of day-to-day decision-making is likely to also contribute to gender balanced responses in crises. Gender sensitive tools do already exist in a number of Aotearoa | New Zealand Government agencies outside of the Ministry for Women. The Ministry of Business, Innovation and Employment, for instance, established in 2018, a gender and race action plan to tackle pay gaps, which was then updated for the years 2021 – 2022.¹¹² Nevertheless, considerable room for improvement remains as illustrated by the lack of a gendered analysis in the 2020 Government budget, the first budget following the start of the pandemic. Both the 2021 and the 2022 budgets were criticised for not taking a gender mainstreaming approach in contrast to Australia's 2021 federal budget which included an 81-page Women's Budget Statement.¹¹³

Conclusion

Evidence suggests that the gender inequalities gap in employment has grown as a result of the pandemic and policies adopted in response to the health crisis. The most vulnerable, those at the cross of multiple sites of vulnerabilities such as Māori and Pacifica women are continuously bearing the brunt of these inequalities. Evidence also suggests that gender diverse people have been uniquely impacted in having to navigate a volatile employment environment with the fear of direct gender discrimination. The response of the policy maker over the last three years remains overwhelmingly gender blind although some recent initiatives show limited progress in the area. The newly adopted *Te Mahere Whai Mahi Wāhine | Women's Action Plan* represents the most comprehensive response tailored to gender needs. While the pandemic has increased inequalities, it also presents us with the opportunity to rethink employment law and policies that could be reframed to support gender equality. Flexible working arrangements provide an opportunity to craft a more equitable division of unpaid labour. The Fair Pay Agreements Act 2022 shows potential for low-paid sectors where women congregate to gain more bargaining power over fair conditions of work, thereby reducing inequalities exacerbated

¹¹⁰ European Parliamentary Research Service, 'Covid-19: The Need for a Gendered Response' (2021) Briefing Paper <[https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI\(2021\)689348#:~:text=Disaggregated%20data%20show%20that%20sex,disrupted%20access%20to%20support%20services](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2021)689348#:~:text=Disaggregated%20data%20show%20that%20sex,disrupted%20access%20to%20support%20services)>.

¹¹¹ 1News, 'Support Services for Family, Sexual Violence Victims Get \$200 Million Funding Boost' (10 May 2022) <<https://www.1news.co.nz/2020/05/10/support-services-for-family-sexual-violence-victims-get-200-million-funding-boost/>>.

¹¹² Ministry of Business, Innovation and Employment, 'MBIE Gender and Ethnic Pay Action Plan' <<https://www.mbie.govt.nz/about/who-we-are/corporate-publications/mbie-gender-and-ethnic-pay-action-plan/>>.

¹¹³ Jennifer Curtin and others, 'NZ Budget 2021: Women Left behind despite the Focus on Well-Being' (*The Conversation*, 20 May 2021) <<http://theconversation.com/nz-budget-2021-women-left-behind-despite-the-focus-on-well-being-161187>> accessed 10 February 2023.

or highlighted by the pandemic. Finally entrenching gender mainstreaming in employment matters would contribute to reduce inequities resulting from crises and disasters in a systemic manner.